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BRIEF

Supreme Court, U.S.
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In the Supreme Court of the United States

ESTHER KIOBEL, individually and on behalf of her late husband, DR. BARINEM KIOBEL, et al.,
Petitioners,

v.

ROYAL DUTCH PETROLEUM CO., et al.,
Respondents.

On Writ of Certiorari to the United States Courts of Appeals for the Second Circuit

BRIEF ON RE-ARGUMENT OF AMICI CURIAE THE INSTITUTE FOR HUMAN RIGHTS AND BUSINESS, ERROL P. MENDES, DAVID PETRASEK, JOHN F. SHERMAN, III, AND THE UNIVERSITY OF MINNESOTA HUMAN RIGHTS LITIGATION AND INTERNATIONAL ADVOCACY CLINIC IN SUPPORT OF NEITHER PARTY

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Hamid v. Price Waterhouse, 51 F.3d 1411 (9th Cir. 1995) 14

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Hidalgo v. Siemens AG, No. 11-20107 (S.D. Fla. filed Jan. 11, 2011) 10

Holocaust Victims of Bank Theft v. Magyar Nemzeti Bank, 807 F. Supp. 2d 689 (N.D. Ill. 2011) 30, 31

In re Chiquita Brands Int'l, Inc. Alien Tort Statute and S'holder Derivative Litig., 792 F. Supp. 2d 1301 (S.D. Fla. 2011) 24

In re S. African Apartheid Litig., 617 F.Supp.2d 228 (S.D.N.Y. 2009) 31

In re S. African Apartheid Litig., 633 F.Supp.2d 117 (S.D.N.Y. 2009) 13, 14

In re Terrorist Attacks on September 11, 2001, 740 F. Supp. 2d 494 (S.D.N.Y. 2010) 14

In re XE Serv. Alien Tort Litig., 665 F. Supp. 2d 569 (E.D. Va. 2009) 21

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Licea v. Curacao Drydock Co, Inc., 537 F.Supp.2d 1270 (S.D. Fla. 2008) 5

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Mujica v. Occidental Petroleum Corp., 381 F. Supp. 2d 1164 (C.D. Cal. 2005) 29

Nat'l Coal. Gov't of Union of Burma v. Unocal, Inc., 176 F.R.D. 329 (C.D. Cal. 1997) 27

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Prince Hotel, SA v. Blake Marine Grp., 433 F. App'x 706 (11th Cir. 2011) 15

Roe v. Unocal Corp., 70 F. Supp. 2d 1073 (C.D. Cal. 1999) 27

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Siswinarti v. Jennifer Shien Ng, No. 05-4171 (D.N.J. filed Aug. 16, 2005)..... 21

Sosa v. Alvarez-Machain, 542 U.S. 692 (2004)..... 18

Thang Hong Luu v. Int'l Inv. Trade & Serv. Grp., No. 11-182 (S.D. Tex. filed Apr. 13, 2011)..... 21

Turedi v. Coca-Cola Co., 460 F.Supp.2d 507 (S.D.N.Y. 2006)..... 5

Viet. Ass'n for Victims of Agent Orange v. Dow Chem. Co., 517 F.3d 104 (2d Cir. 2008).....13, 14

Wang Xiaoning v. Yahoo! Inc., No. 07-02151 (N.D. Cal. filed Apr. 18, 2007) (unpublished joint stipulation of dismissal, filed Nov.13, 2007)..... 9

Wiwa v. Royal Dutch Petroleum Co., 226 F. 3d 88 (2d Cir. 2000) 5, 10, 27, 28

Wiwa v. Royal Dutch Petroleum Co., No. 96-8386, 2002 WL 319887 (S.D.N.Y. Feb. 28, 2002) 20

Wiwa v. Shell Petroleum Dev. Co. of Nigeria Ltd., 335 F. App'x 81 (2d Cir. 2009) 10

STATUTES & RULES

28 U.S.C. § 1350 ("ATS") ..... *passim*

Supreme Court Rule 37.6 1

OTHER AUTHORITIES

George J. Annas, *Globalized Clinical Trials and Informed Consent*, 360 NEW ENG. J. MED. 2050 (2009), *available at* http://www.nejm.org/doi/full/10.1056/NEJMp0901474 19

Neela Banerjee, *Lawsuit Says Exxon Aided Rights Abuses*, N.Y. TIMES, June 21, 2001 35

Bano v. Union Carbide Case History, EARTHRIGHTS INT'L, http://www.earthrights.org/legal/bano-v-union-carbide-case-history (last visited May 15, 2012) 10

Bataween, *Coca-Cola is Guilty of 'Jewish Persecution Denial'*, POINT OF NO RETURN (Nov. 22, 2009), http://jewish refugees.blogspot.com/2009/11/coca-cola-is-guilty-of-jewish.html 36

Michael Blanding, Coke is Death: The Softdrink Giant's Abysmal Human Rights Record is Finally Catching Up With It, NATION, April 19, 2006, available at http://www.alternet.org/story/34976/coke_is_death/?page=2..... 35

Brief For Joseph F. Stiglitz As *Amicus Curiae* in Support of Plaintiffs-Appellees, *Balintulo v. Daimler* (*In re South African Apartheid Litigation*), No. 09-2778 (2d Cir. Nov. 30, 2009), 2009 WL 5177981 32

Brief For Petitioner, *Kiobel v. Royal Dutch Petroleum Co.* (filed Dec. 14, 2011) (No. 10-1491)..... 36

Brief For Product Liability Advisory Counsel, Inc., As *Amicus Curiae* In Support of Respondents, *Kiobel v. Royal Dutch Petroleum Co.* (filed Feb. 3, 2012) (No. 10-1491).....*passim*

Brief For The United States As *Amicus Curiae* In Support of Petitioners, *Kiobel v. Royal Dutch Petroleum Co.* (filed Dec. 21, 2011) (No. 10-1491) 18

Business This Week, THE ECONOMIST, May 14, 2005 32

Danielle Cendrowski, *International Health Law Violations under the Alien Tort Statute: Federal Appeals Court Reinstated Lawsuit under the Alien Tort Statute against United States Pharmaceutical Company Pfizer Brought by Nigerian Children and their Guardians-Abdullahi v. Pfizer, Inc.*, 35 AM. J. L. & MED. 233 (2009) 19

Maureen Chigbo, *How Shell Promotes Criminal Gangs in Niger Delta*, NEWSWATCH (Oct. 27, 2011), http://www.newswatchngr.com/index.php?option=com_content&task=view&id=3628&Itemid=1 35

Colombians Sue Chiquita Over Paramilitary Payments, CNN, June 1, 2011, *available at* http://www.cnn.com/2011/WORLD/americas/05/31/colombia.chiquita.lawsuits/index.html 24

Complaint, *Bano v. Union Carbide Corp.*, 2000 WL 1225789 (S.D.N.Y. 1999) (No. 99-11329) 10

Doe v. Unocal Case History, EARTHRIGHTS INT'L, http://www.earthrights.org/legal/doe-v-unoca lcase-history (last visited June 8, 2012) 27

JONATHAN DRIMMER, U.S. CHAMBER INST. FOR LEGAL REFORM, THINK GLOBALLY SUE LOCALLY: OUT-OF-COURT TACTICS EMPLOYED BY PLAINTIFFS, THEIR LAWYERS, AND THEIR ADVOCATES IN TRANSNATIONAL TORT CASES (2010) 6

Federal Court Management Statistics, U.S. Courts (June 30, 2011), http://www.uscourts.gov/viewer.aspx?doc=/cgibin/cmsd2011Jun.pl 8

Final Settlement Reached in Doe v. Unocal, EARTHRIGHTS INT'L (Mar. 21, 2005,http://www.earthrights.org/legal/final-settlement-reached-doe-v-unocal 27

Natalie Fine, *The Evil Behind Coca-Cola*, THE WESLEYAN ARGUS (Nov. 9, 2010), http://wesleyanargus.com/2010/11/09/theevil-behind-coca-cola/ 36

FULBRIGHT & JAWORSKI, SECOND ANNUAL LITIGATION TRENDS SURVEY 16 (2005) 12

Lisa Girion, *Judge Oks Unocal Abuse Lawsuit*, L A. TIMES (June 12, 2002), http://articles.latimes.com/2002/jun/12/business/fi-unocal12 37

Shabtai Gold, *US Carmaker GM to Compensate Apartheid Victims*, BUS. RECORDER, Mar. 3, 2012, *available at* http://www.brecorder.com/articles-a-letters/187:articles/1161195:us-carmaker-gm-to-compensate-apartheid victims/?date=2012-03-03 31

Thomas Gryza, *Pfizer Profit Declines 70% On Merger, Litigation Costs*, WALL ST. J., Nov. 3, 2010, *available at* online.wsj.com/article/SB10001424052748704462704575589960777586130.html) 13

Karen Gullo, *Rio Tinto Genocide Claims Reinstated by U.S. Appeals Court*, BLOOMBERG, *available at* http:// mobile.bloomberg.com/news/2011-10-25/rio-tinto-genocide-claims-reinstated-byu-s-appeals-court-1 35

Richard L. Herz, *The Liberalizing Effects of Tort: How Corporate Complicity Liability Under the Alien Tort Statute Advances Constructive Engagement*, 21 HARV. HUM. RTS. J. 207 (2008) 32

Indonesia – Exxon Oil Faces Murder Charges, FACT OVER FICTION (July 9, 2011),http://www.factoverfiction.com/article/1109 35

Judicial Business of the U.S. Courts, U.S. Courts, http://www.uscourts.gov/Statistics/JudicialBusiness.aspx 6

Judicial Business of the U.S. Courts, Table C-2, U.S. Courts (Sept. 30, 2010), http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2010/appendices/C02Sep10.pdf..... 7

Judicial Business of the U.S. Courts, Table S-10, U.S. Courts (Sept. 30, 2010), http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2010/tables/S10Sep10.pdf..... 7

Judicial Business of the U.S. Courts, Table S-11, U.S. Courts (Sept. 30, 2010), http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2010/tables/S11Sep10.pdf..... 9

Gabriel Katsh, *Fueling Genocide: Talisman Energy and the Sudanese Slaughter*, MULTINATIONAL MONITOR (Oct. 2000),http://www.multinationalmonitor.org/mm2000/102000/katsh.html..... 35

Carol Krafka et al., *Judge and Attorney Experiences, Practices, and Concerns Regarding Expert Testimony in Federal Civil Trials*, 8 PSYCHOL. PUB. POL'Y & L. 309 (2002) 15

Kevin M. LaCroix, *Why Mergers & Acquisitions-Related Litigation is a Serious Problem*, 7 OAKBRIDGE INSIGHTS 2 (2012) 13

Erik Larson & Joshua Goodman, *Murders May Lead to Damages Tailspin for Chiquita (Update 2)*, BLOOMBERG, Apr. 2, 2008, http://www.bloomberg.com/apps/news?pid=20601109&sid=aqsoW_J3nbOU&refer=home 35

LAWYERS FOR CIVIL JUSTICE ET AL., LITIGATION COST SURVEY OF MAJOR COMPANIES (2010) 11, 12

Berly Lelievre-Acosta, *A Cost-Effective Alternative World Intellectual Property*, WORLD INTELLECTUAL PROP. ORG. MAG. Feb. 2010, *available at* http://www.wipo.int/wipo_magazine/en/2010/01/article_0008.html 12

Donald G. McNeil Jr., *Nigerians Receive First Payments for Children Who Died in 1996 Meningitis Drug Trial*, N.Y. TIMES, Aug. 11, 2011, *available at* http://www.nytimes.com/2011/08/12/world/africa/12nigeria.html 20

Nicole Perlroth, *Pfizer Finalizing Settlement in Nigerian Drug Suit*, FORBES, Apr. 3, 2009, *available at* http://www.forbes.com/2009/04/03/pfizer-kano-trovan-business-healthcare-settlement.html 20

Mike Pflanz, *Shell 'Played Role in Activist Executions'*, TELEGRAPH, May 25, 2009, http://www.telegraph.co.uk/finance/newsbysector/energy/5383923/Shell-played-role-inactivist-executions.html 35

PUBLIC ACCESS TO COURT ELECTRONIC RECORDS, http://www.pacer.gov/ (last visited May 27, 2012) 7, 8

Elliott Schrage, *Memorandum: Emerging Threat: Human Rights Claims*, HARV. BUS. REV. 16 (2003) 38

Sentencing Memorandum By The United States, *United States v. Chiquita Brands Int'l, Inc.*, No. 07-055 (D.D.C. 2007) (filed Sept. 17, 2007) 23

Soaraway, *Coca-Cola's Use of Paramilitary Death Squads in Colombia*, BUZZNET (Jan.30, 2007),http://soaraway.buzznet.com/user/journal/108568/coca-colas-use-paramilitary-death/ 36

Special Representative of the Secretary-General, *Business and Human Rights: Further Steps toward the Operationalization of the "Protect, Respect and Remedy" Framework*, U.N. Doc. A/HRC/14/27 (Apr. 9, 2010)..... 38

Special Representative of the Secretary-General, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) 39

Special Representative of the Secretary-General, *Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, U.N. Doc. E/CN.4/2006/97 (Feb. 22, 2006)..... 37

Statistical Tables for the Federal Judiciary, Table C-4, U.S. Courts (June 30, 2011), http://www.uscourts.gov/uscourts/Statistics/StatisticalTablesForTheFederalJudiciary/2011/C04Jun11.pdf 8

Statistical Tables for the Federal Judiciary, Table C-5, U.S. Courts (June 30, 2011), http://www.uscourts.gov/uscourts/Statistics/StatisticalTablesForTheFederalJudiciary/2011/C05Jun11.pdf 8

Jonathan Stempel, *Indonesia Torture Case vs ExxonMobil Revived*, REUTERS, July 8, 2011, http://www.reuters.com/article/2011/07/08/us-exxonmobil-indonesiaidUSTRE76744G20110708 34

David M. Studdert et al., *Claims, Errors, and Compensation Payments in Medical Malpractice Litigation*, 354 NEW ENG. J. MED. 2024 (2006) 9, 16

U.S. SENTENCING GUIDELINES MANUAL §8B2.1 (2011) 39

Weil, Gotshal & Manges LLP, *Memorandum: Corporation Social Responsibility for Human Rights: Comments on the UN Special Representative's Report Entitled, "Protect, Respect and Remedy: a Framework for Business and Human Rights,"* May 22, 2008 33

Kyle Whitmire, *Colombian Killings Land U.S. Company in American Court*, WALL ST. J., Oct. 6, 2003 35

INTEREST OF AMICI CURIAE[1]

Amici are organizations, experts and scholars who have an interest in the accurate analysis of human rights litigation in U.S. courts, as well as the relationship of Alien Tort litigation to corporate social responsibility and the deterrence of human rights violations. Complete descriptions of Amici are provided in Appendix A. Amici submit this brief in support of neither party.

SUMMARY OF ARGUMENT

The Alien Tort Statute (ATS), 28 U.S.C. §1350 was enacted by Congress to provide a federal forum for tort claims by aliens for violations of the law of nations or treaties of the United States. Despite this congressional mandate, respondents' amicus Products Liability Advisory Council, Inc. (PLAC) wrongly argues that suits by aliens against corporations place an unsustainable burden on corporations and the federal courts. Amici write to correct PLAC's misstatements and distortions about ATS litigation.

The majority of ATS corporate cases are brought against companies headquartered or doing significant business in the United States and where

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[1] Pursuant to Rule 37.6, counsel for amici states that no counsel for a party authored this brief in whole or in part, and that no person other than amicus, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. The parties have filed letters of consent with the Clerk of the Court.

the complaints allege evidence of corporate complicity in the human rights violations alleged against the defendants. PLAC's own appendix concedes that 80% of claims "brought substantive claims alleging a well-established violation of international law, such as genocide, war crimes, torture, extrajudicial killing, crimes against humanity, and others." Brief For Product Liability Advisory Counsel (sic), Inc., As *Amicus Curiae* In Support of Respondents, *Kiobel v. Royal Dutch Petroleum Co.* (filed Feb. 3, 2012) (No. 10-1491), Appendix (App.) 5. In making their argument about the supposed burden imposed by ATS cases on the courts, PLAC cites to figures which are inaccurate and out of context. ATS claims against corporations represent a minute fraction of civil litigation filed against corporations in U.S. federal courts each year. PLAC's rhetoric is contradicted by its own numbers which show that only 245 ATS cases (with 120 containing a corporate defendant) have been filed since 1974. *See* PLAC Br. 5, App. B.

PLAC's assertions about the lack of connection between the conduct of ATS defendants and the injuries suffered by plaintiffs are belied by actual court decisions. Amici do not argue that all cases asserting ATS claims have merit. Rather, like other civil litigation, some cases were dismissed for failure to state a claim under the ATS, for want of personal jurisdiction, or on forum non conveniens grounds. Federal courts deal with ATS claims with the same efficiency that they employ for any other form of civil adjudication.

PLAC's claims of reputational damage caused by ATS cases to corporations are exaggerated and unreliable. For example, PLAC suggests that Chiquita was injured by unfair claims concerning its conduct in Colombia and ignores that the corporation was criminally prosecuted, pled guilty, and paid a multi-million dollar fine for its material support to terrorists. PLAC errs in its assertions about the adverse effect of ATS litigation on poor countries in need of foreign investment; these assertions also are contradicted by statistical evidence. Further, as experts acknowledge, the mere possibility of liability under the ATS has contributed to greater self-regulation by multinational corporations.

ATS cases intend to compensate victims of human rights abuses, deter human rights violations, punish bad behavior, and level the playing field by removing a competitive advantage to companies engaged in human rights violations. Judge Richard Posner recently noted,

> One of the amicus curiae briefs argues, seemingly not tongue in cheek, that corporations shouldn't be liable under the Alien Tort Statute because that would be bad for business. That may seem both irrelevant and obvious; it is irrelevant, but not obvious. Businesses in countries that have and enforce laws against child labor are hurt by competition from businesses that employ child labor in countries in which employing children is condoned.

Flomo v. Firestone, 643 F.3d 1013, 1021 (7th Cir. 2011).

The cases brought under the ATS involve the most egregious of human rights abuses, and are thus rare. With growing corporate efforts to strengthen their human rights internal compliance mechanisms, such cases will become even fewer and far between. The statute offers a narrow remedy, many hurdles for plaintiffs, and a comparatively minimal burden on the courts. PLAC has not provided a reasonable basis for removing this potential remedy for corporate involvement in grievous human rights violations.

ARGUMENT

I. PLAC'S ANALYSIS OF THE TIME AND COST OF ATS LITIGATION MISSTATES THE FACTS AND CONTEXT

The case law PLAC cites does not support its contention that litigating ATS claims is overly time-consuming and burdensome for corporations unconnected to the United States. In most corporate ATS cases, at least one defendant is headquartered in this country. In the remainder, a substantial number of corporate defendants have sufficient U.S. presence to meet due process requirements. Thus the United States has a clear interest in their conduct. ATS cases represent a fraction of U.S. civil litigation and are no more

burdensome than other types of civil action and are as efficiently adjudicated by U.S. federal courts.

A. The Majority of ATS Corporate Cases Have at Least One U.S. Citizen Defendant.

Throughout its brief, PLAC suggests that ATS cases have little or no connection to U.S. corporations. However, examining the cases presented in PLAC's appendix reveals that over 75% involve at least one corporation headquartered in the United States.[2] Of the remaining 25%, in a number of the cases, the courts rejected defendants' motions to dismiss because the lack of U.S. corporate headquarters was offset by other factors. *See, e.g., Licea v. Curacao Drydock Co, Inc.* 537 F.Supp.2d 1270 (S.D. Fla. 2008) (Cuban plaintiffs' case not transferred to Curacao because plaintiffs would face physical danger); *see also Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88 (2d Cir. 2000) (finding personal jurisdiction and denying motion to dismiss on forum non conveniens grounds). In a handful of cases the courts found insufficient connections to the United States to proceed, and dismissed them at the early stages of the case. *See, e.g., Turedi v. Coca-Cola Co.*, 460 F.Supp.2d 507 (S.D.N.Y. 2006).

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[2] A chart indicating the locations of corporate headquarters and cases with connections to the United States is provided in Appendix B.

B. ATS Cases Account for a Small Percentage of U.S. District Civil Court Cases.

Despite PLAC's arguments that ATS cases against corporations pose a supposed burden on courts, the facts PLAC presents prove otherwise. In terms of an estimated total of cases, PLAC reports that only 245 ATS cases have been filed since 1974. PLAC Br. 5. According to one source upon which PLAC relies, since 1994, only six to ten new corporate ATS claims have been filed annually. JONATHAN DRIMMER, U.S. CHAMBER INST. FOR LEGAL REFORM, THINK GLOBALLY, SUE LOCALLY: OUT-OF-COURT TACTICS EMPLOYED BY PLAINTIFFS, THEIR LAWYERS, AND THEIR ADVOCATES IN TRANSNATIONAL TORT CASES 5 (2010).

ATS numbers need to be considered in the context of civil litigation generally. Since 2000, approximately 267,000 civil claims have been filed each year.[3] Thus, corporate ATS claims constitute roughly between .0023%–.0038% of all civil claims filed annually in federal courts. According to PLAC statistics, approximately fourteen corporate-defendant ATS cases were filed each year from 2008 to 2011.[4] While PLAC's number is higher

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[3] *See Judicial Business of the U.S. Courts*, U.S. Courts (Sept. 30, 2010), http://www.uscourts.gov/Statistics/JudicialFactsAndFigures.aspx.

[4] PLAC statistics are not reliable because as PLAC admits, its analysis omits some cases, PLAC app. 13, and this brief notes additional cases that PLAC failed to discuss.

than the six to ten case estimate provided by Drimmer, ATS still only comprises a small percentage—.0052%—of civil cases filed every year.

By way of comparison, in 2010, approximately 64,000 product liability cases were filed in U.S. district courts. *Judicial Business of the U.S. Courts, Table S-10*, U.S. Courts (Sept. 30, 2010). Product liability cases accounted for just over 22% of the 282,895 civil cases filed in federal courts in 2010. *Id., Table C-2*, U.S. Courts (Sept. 30, 2010).

ATS cases are also a small fraction of cases filed against any particular company. Public records indicate that Wal-Mart and its stores have been named as defendants in over 15,000 civil cases since 2002,[5] yet Wal-Mart was named as a defendant in just one ATS case. *Doe I v. Wal-Mart Stores Inc.*, No. 05-07307, 2005 WL 4049637 (C.D. Cal. filed Dec. 23, 2005). Similarly, the same records suggest that Exxon Mobil has been named as a defendant in over 6,000 suits in the past ten years,[6] but only one ATS suit. *Doe v. Exxon Mobil Corp.*, 654 F.3d 11 (D.C. Cir. 2011).

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[5] PUBLIC ACCESS TO COURT ELECTRONIC RECORDS, http://www.pacer.gov/ (last visited May 27, 2012).

[6] *Id.*

C. ATS Cases Do Not Last Significantly Longer than Other Civil Cases and Do Not Require More Resources.

In an attempt to show how disproportionately lengthy ATS cases are, PLAC offers misleading comparisons between the average duration of ATS cases and the median duration of *all* civil actions filed in federal courts. PLAC Br. 6 (citing *Statistical Tables for the Federal Judiciary, Table C-5,* U.S. Courts (June 30, 2011)). First, PLAC only provides the median length of time from filing to disposition for civil litigation. *See Federal Court Management Statistics*, U.S. Courts (June 30, 2011). Second, the Statistical Tables released for the Federal Judiciary include a wide variety of civil claims such as contract actions, real property cases, various tort actions, and actions under statutes (*e.g.*, consumer credit cases, cable/satellite TV actions, bankruptcy suits, antitrust suits, civil rights cases, Fair Labor Standards Act cases, labor litigation, copyright cases, patent cases, trademark cases, and constitutionality cases). *See Statistical Tables for the Federal Judiciary, Table C-4,* U.S. Courts (June 30, 2011).[7] Comparison with specific types of civil litigation indicate that ATS litigation is not unusually long.

Many civil cases last significantly longer than the 7.3 month average PLAC cites. PLAC Br.

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[7] Categories of civil cases included in Table C-4, but excluded in Table C-5 are prisoner petitions, deportation reviews, recovery of overpayments, and enforcement of judgments.

6. In 2010, available statistics establish that there were 44,982 civil cases open that had been pending for three years or longer; in 2009, this number was 35,720. *See Judicial Business of the U.S. Courts, Table S-11*, U.S. Courts (Sept. 30, 2010). In 2010, 32,305 of the 44,982 cases lasting over three years were tort cases. *Id.* In 2009, 23,570 of the 35,720 were tort civil claims. *Id.* A 2006 study found that medical malpractice cases on average last five years from the occurrence of the injury to the closure of the claim. David M. Studdert et al., *Claims, Errors, and Compensation Payments in Medical Malpractice Litigation*, 354 NEW ENG. J. MED. 2024, 2026 (2006).

PLAC does not include in its calculation cases resolved without a reported decision, including fourteen cases resolved in less than one year, and some as little as two months. *See* App. B.[8] PLAC lists ten cases to demonstrate how

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[8] *See Wang Xiaoning v. Yahoo! Inc.*, No. 07-02151 (N.D. Cal. filed Apr. 18, 2007); *Ge v. Shanghai Mun. Branch Comm. of Chinese Communist Party*, No. 10-7964 (S.D.N.Y. filed Oct. 10, 2010); *Hassoon v. Xe*, No. 09-647 (S.D. Cal. filed Apr. 1, 2009); *Jarallah v. Xe*, No. 09-631 (S.D. Cal. filed Mar. 27, 2009); *Al-Razzaq v. Xe*, No. 09-626 (S.D. Cal. filed Mar. 26, 2009); *Sa'adoon v. Xe*, No. 09-561 (S.D. Cal. filed Mar. 19, 2009); *Al-Taee v. L-3 Services*, No. 08-12790 (E.D. Mich. filed June 30, 2008); *Margallo-Gans v. Farrell*, No. 09-4026 (D.S.D. filed March 6, 2009); *Guanipa v. Chavez*, No. 09-20999 (S.D. Fla. filed Apr. 15, 2009); *Ahmed v. Dubai Islamic Bank*, No. 08-21564 (S.D. Fla. filed June 2, 2008); *Cooperhill Inv. Ltd. v. Rep. of Seychelles*, No. 11-962 (S.D.N.Y. filed Feb. 14, 2011); *Kaplan v. Al Jazeera*, No. 10-5298 (S.D.N.Y. filed July 12, 2011); *Okpabi v. Royal Dutch Shell*, No. 11-14572 (E.D. Mich.

lengthy ATS claims can be, stating that while "the present case has been in litigation for over nine years...others have gone on even longer." PLAC Br. 6. Again PLAC's argument is riddled with errors, as revealed by analysis of the cases it presents. PLAC mischaracterizes the history of *Bano v. Union Carbide Corp.*, 198 F.App'x 32 (2d Cir. 2006), reporting that the case lasted 28 years (PLAC App. 12) in an attempt to show that ATS claims are excessively long, although the ATS case lasted 7 years.[9] *See* PLAC Br. 7, App. 12. Four of the cases PLAC lists lasted eight years or less. *See Bowoto v. Chevron Corp.*, 621 F.3d 1116 (9th Cir. 2010); *Aldana v. Del Monte Fresh Produce N.A., Inc.*, 578 F.3d 1283 (11th Cir. 2009); *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252 (11th Cir. 2009); *Bigio v. Coca-Cola Co.*, 239 F.3d 440 (2d Cir. 2000); *See also* PLAC Br. 7, App. 9–14; *Wiwa*, 226 F.3d 88 and *Wiwa v. Shell Petroleum Dev. Co. of Nigeria, Ltd.*, 335 Fed.App'x. 81 (2d Cir. 2009) (in PLAC's Appendix B, the years of litigation appears to be

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filed Oct. 18, 2011); *Hidalgo v. Siemens AG*, No. 11-20107 (S.D. Fla. filed Jan. 11, 2011).

[9] While state law claims relating to the 1984 Union Carbide gas plant disaster at Bhopal, India were filed in the U.S. as early as 1985, they were dismissed in favor of litigating in India. *See Bano v. Union Carbide Case History*, EARTHRIGHTS INT'L. http://www.earthrights.org/legal/bano-v-union-carbide-case-history. When Bhopal victims did not get relief in India, the claims in ATS *Bano* claims were filed in 1999. Complaint, *Bano v. Union Carbide Corp.*, 2000 WL 1225789 (S.D.N.Y. 1999) (No. 99-11329). That litigation concluded in 2006. *Bano v. Union Carbide Corp.*, 198 Fed. App'x. 32 (2d Cir. N.Y. 2006).

calculated by treating the latter as if it began when the first case was filed).

A significant factor in the length of cases is what PLAC characterizes as "vigorous[]" defenses, PLAC Br. 21, but PLAC disregards the role of corporate defendants in unnecessarily extending the litigation period. Indeed, some of these vigorous defenses resulted in court sanctions imposed upon the defendants. *See, e.g., Linde v. Arab Bank*, 269 F.R.D. 186, 191 (E.D.N.Y. 2010) (defendants sanctioned for delays in discovery); *Doe v. Exxon Mobil Corp.*, No. 01-01357 (D.D.C. 2007) (unpublished opinion, filed July 13, 2007) (defendants' motion practice led court to require that all parties certify compliance with F.R.C.P. Rule 11 before filing motions). Even assuming the accuracy of PLAC's calculation that ATS cases last an average of five years, the time is not inconsistent with tens of thousands of other cases in our federal system.

PLAC also exaggerates figures about the costs of litigation in general and offers no explanation as to how its exaggerated numbers apply to ATS cases. PLAC argues that, on average, Fortune 200 companies will pay $2,019,248 per case (excluding discovery) in "average outside legal costs" and will pay $2,354,868 to $9,759,9000 on discovery. PLAC Br. 9 (citing LAWYERS FOR CIVIL JUSTICE ET AL., LITIGATION COST SURVEY OF MAJOR COMPANIES 3, app. 1 at 14 (2010)). In fact, the discovery figures that PLAC cites are for companies "at the high end," whereas the average Fortune 200

respondent to the LAWYERS FOR CIVIL JUSTICE ET AL. survey reported average discovery costs at $621,880 to $2,993,567. LAWYERS FOR CIVIL JUSTICE ET AL., 3, app. 1 at 14. In addition, the report cited by PLAC includes some methodological gaps, namely a small sample size for this data, because "only some of the survey respondents were able to provide data on a per case basis." *Id.* The report only notes that these costs occurred in "major" cases and provides no discussion about what specific claims were addressed in those cases; PLAC provides no analysis of whether these costs are actually representative of the costs of ATS litigation. PLAC Br. 9 (citing LAWYERS FOR CIVIL JUSTICE ET AL. at 3).

On average, corporations report that the most expensive categories of litigation are intellectual property, regulatory matters, contracts claims, personal injury and unemployment actions. FULBRIGHT & JAWORSKI, SECOND ANNUAL LITIGATION TRENDS SURVEY 16 (2005). Alien Tort claims did not make the list.

Though it is difficult to draw conclusions about average litigation costs, and many variables are at stake, PLAC exaggerates the potential costs of Alien Tort cases when compared to other areas of civil litigation. For example, patent litigation can typically cost up to $4,000,000. Berly Lelievre-Acosta, *A Cost-Effective Alternative World Intellectual Property,* WORLD INTELLECTUAL PROP. ORG. MAG., Feb. 2010. From 2009 to 2011, the median class action settlement for securities

litigation cost $9,670,000, which does not even factor in associated costs. Kevin M. LaCroix, *Why Mergers & Acquisitions-Related Litigation is a Serious Problem*, 7 OAKBRIDGE INSIGHTS 2 (2012). Certain large-scale torts can cost hundreds of millions of dollars to litigate. Thomas Gryza, *Pfizer Profit Declines 70% On Merger, Litigation Costs*, WALL ST. J. (Nov. 3, 2010) (reporting that Pfizer spent $701 million before tax on asbestos litigation).

Another factor PLAC addresses is the number of defendants and counsel involved in corporate ATS cases. PLAC claims that ATS suits "name numerous corporate defendants and involve a significant number of counsel," PLAC Br. 7, but illustrates this point by using three atypical suits as examples: *Saleh v. Titan Corp.*, 580 F.3d. 1 (D.C. Cir. 2009) (involving five corporate defendants and ten law firms); *Viet. Ass'n for Victims of Agent Orange v. Dow Chem. Co.*, 517 F.3d 104 (2d Cir. 2008) involving thirty-six corporate defendants and twenty law firms); and *In re S. African Apartheid Litig.*, 633 F.Supp.2d 117 (S.D.N.Y. 2009) (involving forty-three corporate defendants and twenty-seven law firms). PLAC's own data, though, highlights that this is a gross overrepresentation of the actual complexity of ATS claims.[10] Nine cases have more than twenty

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[10] The average number of corporate defendants per ATS case listed by PLAC is only 6.77. This average was computed using the number of corporate defendants provided by PLAC for each case listed in Appendix B.

corporate defendants.[11] If these nine anomalies are removed, the remaining 109 cases (92% of the cases) on average only have three corporate defendants.[12]

PLAC's data also reflects that, on average, only seven law firms were involved in each ATS case (four plaintiffs and three defendants).[13] Further, when calculating the number of law firms, PLAC considered "non-profit organizations, non-governmental organizations, law school clinics, and other legal service providers." PLAC App. 6. Including these organizations undermines PLAC's arguments regarding cost since often non-profit organizations, non-governmental organizations,

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[11] PLAC Appendix B (citing *Viet. Ass'n for Victims of Agent Orange v. Dow Chem. Co.*, 517 F.3d 104 (2d Cir. 2008); *Khulumani v. Barclay Nat'l Bank Ltd.*, 509 F.3d 148 (2d Cir. 2007); *Deutsch v. Turner Corp.*, 317 F.3d 1005 (9th Cir. 2003); *Hamid v. Price Waterhouse*, 51 F.3d 1411 (9th Cir. 1995); *In re Terrorist Attacks on September 11, 2001*, 740 F.Supp.2d 494 (S.D.N.Y. 2010); *In re S. African Apartheid Litig.*, 633 F.Supp.2d 117 (S.D.N.Y. 2009); *Jarallah v. Xe*, No. 09-631, 2009 WL 1350958 (S.D. Cal. filed Mar. 27, 2009); *Al-Razzaq v. Xe*, No. 09-626, 2009 WL 1350956 (S.D. Cal. filed Mar. 26, 2009); *Sa'adoon v. Xe*, No. 09-561, 2009 WL 761253 (S.D. Cal. filed Mar. 19, 2009).

[12] The exact average is 3.33.

[13] The exact average number is 7.06 law firms. The average numbers for law firms representing plaintiffs (4.07) and defendants (3.36) were only computed for the shaded cases as PLAC does not provide a breakdown of plaintiff and defendant law firms for non-shaded cases. PLAC App. B.

and law school clinics work on cases without charging a fee. Thus, the overall number of fee charging "law firms" is far lower than the number reported above.

The number of experts in ATS litigation is another issue PLAC highlights, but again, PLAC uses only selective examples, analyzing cases where four to six experts provided reports for defendants. *See* PLAC Br. 8. But these numbers are consistent with the average number of experts used in civil litigation. A 2002 report found that in tort cases, an average of 3.11 experts testify at trial for plaintiffs and 2.28 testify for defendants. Carol Krafka et al., *Judge and Attorney Experiences, Practices, and Concerns Regarding Expert Testimony in Federal Civil Trials*, 8 PSYCHOL. PUB. POL'Y & L. 309, 319 (2002).

Without explaining its standard, PLAC lists ATS cases that it deems "lengthy" and "almost patently defective," PLAC Br. 10–11. Despite the availability of Rule 11 sanctions, no cases PLAC deems "patently defective" were the subject of sanctions. PLAC's analysis also contains internal contradictions. Certain cases are counted both for the proposition that they allege substantive, well-established ATS violations, PLAC App. 5, and for the proposition that they contain "patently defective" ATS claims. PLAC Br. 10, 11 (citing *Orkin v. Swiss Confederation*, No. 11-1414, 2011 WL 4822343 (2d Cir. Oct. 12, 2011); *Prince Hotel, SA v. Blake Marine Grp.*, 433 F.App'x 706 (11th Cir. 2011); *Arndt v. UBS AG*, 342 F.Supp.2d 132

(E.D.N.Y. 2004); and *Maugein v. Newmont Mining Corp.*, 298 F.Supp.2d 1124 (D. Colo. 2004)).[14] PLAC mischaracterizes the length of selected cases by omitting or miscalculating their duration. *See Arndt*, 342 F.Supp.2d 132 (seven months); *Mendonca v. Tidewater, Inc.*, 159 F.Supp.2d 299 (E.D. La. 2001) (approximately two years rather than six years).

As Petitioners have noted, there are adequate procedural safeguards in place to ensure that ATS claims with inadequate allegations or those more properly brought in another court, do not proceed in U.S. court. Petitioners provided six cases to demonstrate this point. *See* Pet'rs Br. 59–60 n.57–59. PLAC uses four of these cases to demonstrate "how costly and time-consuming rejected ATS lawsuits are for corporations." PLAC Br. 11–12. Yet, two of the four cases cited as undue burdens on corporations did not even involve corporate defendants. *Gonzalez-Vera v. Kissinger*, 449 F.3d 1260 (D.C. Cir. 2006) (plaintiffs sued United States and Henry Kissinger); *Mamani v. Berzain*, 654 F.3d 1148 (11th Cir. 2011) (plaintiffs

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[14] The small number of claims that PLAC deemed "patently defective" contrasts with statistics by critics in other areas of the law. For example, one article categorized 1/3 of medical malpractice claims as meritless. David M. Studdert et al. *Claims, Errors, and Compensation Payments in Medical Malpractice Litigation*, 354 NEW ENG. J. MED. 2024, 2029 (2006). Of course, all "defective" or "meritless" litigation is a burden on the court system and the economy, but even PLAC is unable to come up with more than a handful of such claims under the ATS, hardly a sufficient reason to eliminate all such litigation.

sued the former president of Bolivia and the former defense minister of Bolivia). *Flomo*, 643 F.3d 1013, was at the summary judgment phase when the Seventh Circuit dismissed the case. In *Sarei v. Rio Tinto, PLC*, 487 F.3d 1193 (9th Cir. 2007) discussed below, pending at the Ninth Circuit Court of Appeals, courts have repeatedly found that the allegations sufficiently state claims under the ATS.

The PLAC brief inaccurately implies that limits on the ATS would eliminate or reduce litigation, yet a number of the cases PLAC lists do not even contain ATS claims. *Mendonca*, 159 F.Supp.2d at 301, was a Title VII case, unsuccessfully amended to include an ATS claim as *fifth* cause of action. *Abecassis v. Wyatt*, 785 F.Supp.2d 614 (S.D. Tex. 2011), continues under the Anti-Terrorism Act although the Torture Victim Protection Act (TVPA) and the ATS claims were dismissed. *See also*, *Kruman v. Christie's Int'l PLC*, 129 F.Supp.2d 620 (S.D.N.Y. 2001) (litigated under the Sherman Anti-Trust Act long after ATS claims were dismissed). Still other cases have multiple claims under other statutes besides the ATS. *See, e.g., Adhikari v. Daoud & Partners*, 697 F.Supp.2d 674 (S.D. Tex. 2009) (claims pending under the Trafficking Victims Protection Reauthorization Act, RICO and the ATS). Further, state law claims arising out of the same operative facts could have been litigated in state court or under federal diversity jurisdiction if the ATS did not have extraterritorial reach. *See, e.g., Doe v. Unocal Corp.*, Nos. BC 237 980, BC 237 679 (Cal. Super. Ct. Oct. 4, 2000). But this would not decrease the length or cost of these cases, and

forcing plaintiffs to litigate such cases in state court would undermine the founders' intent in creating a statute directing these cases to the federal courts. *See Sosa v. Alvarez-Machain*, 542 U.S. 692, 720 (2004); Brief For The United States As *Amicus Curiae* In Support of Petitioners, *Kiobel v. Royal Dutch Petroleum Co.* (filed Dec. 21, 2011) (No. 10-1491).

II. PLAC MISREPRESENTS ATS COURT OPINIONS AND ALLEGATIONS

PLAC erroneously asserts that corporate defendants in ATS cases are "rarely direct or even indirect actors in the conduct alleged to be in violation of an international norm." PLAC Br. 12. To the contrary, ATS cases involve either direct participation in the abuses suffered by plaintiffs by corporate defendants or secondary liability for the abuses by the corporate defendants. The allegations of corporate involvement have survived the careful scrutiny of courts across the country on motions to dismiss the claims. Moreover, PLAC concedes (albeit indirectly) that 80% of ATS cases with reported decisions "brought substantive claims alleging a well-established violation of international law, such as genocide, war crimes, torture, extrajudicial killing, crimes against humanity, and others." PLAC App. 5. The following two sections will describe just a sampling of corporate-defendant ATS cases criticized in the PLAC brief, to demonstrate the errors and misrepresentations that pervade the brief.

A. PLAC Misrepresents ATS Direct Liability Claims.

In its assertion that ATS claims "rarely" involve direct corporate liability, PLAC overlooks or mischaracterizes cases that evidence the contrary. In *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163 (2d Cir. 2009), plaintiffs alleged direct corporate involvement in medical experimentation on Nigerian children without their parents' consent that left eleven children dead and many others blind, deaf, paralyzed, or brain-damaged. The Second Circuit held that these acts constituted violations of customary international law actionable under the ATS. A scholar in *The New England Journal of Medicine* commented that the *Abdullahi* ruling "should help persuade international corporations and researchers alike to take informed consent...much more seriously." George J. Annas, *Globalized Clinical Trials and Informed Consent*, 360 NEW ENG. J. MED. 2050 (2009). *See also* Danielle Cendrowski, *International Health Law Violations under the Alien Tort Statute: Federal Appeals Court Reinstated Lawsuit under the Alien Tort Statute against United States Pharmaceutical Company Pfizer Brought by Nigerian Children and their Guardians-Abdullahi v. Pfizer, Inc.*, 35 AM. J. L. & MED. 233, 236 (2009) (concluding that as a result of *Abdullahi*, "pharmaceutical and health care companies must be more cognizant of their actions in foreign countries that may give rise to potential claims under ATS for violations of other norms of

customary international health law.")[15] In 2009, Pfizer reached a $75 million settlement with the state of Kano in Nigeria, Nicole Perlroth, *Pfizer Finalizing Settlement in Nigerian Drug Suit*, FORBES, Apr. 3, 2009, and the civil case resulted in a confidential settlement in February 2011. Donald G. McNeil Jr., *Nigerians Receive First Payments for Children Who Died in 1996 Meningitis Drug Trial*, N.Y. TIMES, Aug. 11, 2011.

PLAC also fails to acknowledge that in *Wiwa v. Royal Dutch Petroleum Co.*, plaintiffs alleged that corporate employees bribed witnesses to give false testimony against Shell critic Ken Saro-Wiwa. *Wiwa v. Royal Dutch Petroleum Co.*, No. 96-8386, 2002 WL 319887, at *2, 9, 25 (S.D.N.Y. Feb. 28, 2002). The court rejected defendants' motion to dismiss and found sufficient allegations of defendants' direct participation in the human rights violations. *Id.* at *12–13.

Cases alleging direct corporate involvement in trafficking and forced labor and other human rights abuses are currently pending against U.S. contractor Kellogg Brown & Root and its subcontractor in *Adhikari v. Daoud and Partners*. In that case, the victims were Nepalese men who were told that they would be working in a Jordanian hotel, but were sent to work on a U.S. military base in Iraq, and were later murdered by insurgents. *Adhikari*, 697 F.Supp.2d at 679–80. The Court held, "Plaintiffs allege that they were

deceived and coerced to... work for KBR, thereby making them victims of human trafficking and forced labor." *Id.* at 687. That case is now in discovery in the Southern District of Texas.[16] Other ATS cases involving migrant farmworkers trafficked from other countries and forced to work in the United States have successfully alleged direct violations of international law by corporations.[17]

Of the cases against U.S. contractors criticized by PLAC as litigation "during conflict scenarios," PLAC Br. 15 n.11, a number have survived defendants' motions to dismiss and have settled. *See, e.g., In re XE Serv. Alien Tort Litig.*, 665 F.Supp.2d 569 (E.D. Va. 2009) (denying motion to dismiss in a series of cases against Blackwater for beatings and shootings, including launching a grenade into a girls' school and a

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[16] A separate ruling found that the court had personal jurisdiction over Jordanian subcontractor Daoud. *Adhikari v. Daoud & Partners*, No. 09-1237 (S.D. Tex. Dec. 12, 2011).

[17] While PLAC mentions several of these cases in a footnote, there is a misleading preface implying that there is a distinction between cases which allege violations on U.S. soil and others which allege conduct on foreign territory. In fact, all the cases cited involve both. *See Magnifico v. Villanueva*, 783 F. Supp. 2d 1217 (S.D. Fla. 2011); *Thang Hong Luu v. Int'l Inv. Trade & Serv. Grp*, No. 11-182 (S.D. Tex. filed Apr. 13, 2011); *Margallo-Gans*, No. 09-4026; *Aguilar v. Imperial Nurseries*, No. 07-193 (D. Conn. filed Feb. 8, 2007); *Siswinarti v. Jennifer Shien Ng*, No. 05-4171 (D.N.J. filed Aug. 16, 2005); *Ponce-Rubio v. North Brevard, Inc.*, No. 03-738 (M.D. Fla. filed Oct. 3, 2003).

massacre in Nisoor Square which left seventeen Iraqi civilians dead and more than twenty injured); the case settled in 2010. *See In re XE Serv. Alien Tort Litig.*, Nos. 09-615, 09-616, 09-617, 09-618, 09-645, 09-1017 and 09-1048 (E.D. Va. Jan. 6, 2010)(order of stipulated dismissal); *Jarallah v. Xe*, No. 09-631, 2009 WL 1350958 (S.D. Cal. filed Mar. 27, 2009) (schoolteacher was killed by Xe-Blackwater shooters in Iraq; case transferred and consolidated with *In re XE Serv.*); *see also Al-Quraishi v. Nakhla*, 728 F.Supp.2d 702 (D. Md. 2010) (allowed to proceed by the Fourth Circuit in *Al Shimari v. CACI Int'l, Inc.*, No. 09-1335, 2012 WL 1656773, at *4 (4th Cir. May 11, 2012) (rehearing en banc)).

The cases described above make clear that a significant number of ATS cases allege defendant corporations' direct involvement in human rights violations meeting the *Sosa* standard.

B. PLAC Misrepresents Cases Charging Corporations with Secondary Liability for Human Rights Violations.

PLAC's analysis of cases alleging secondary liability by corporations mischaracterizes the ATS cases that it cites and fails to mention other cases that would further contradict their assertions. In support of the erroneous claim that the corporate defendants in ATS are "rarely...even indirect actors in the conduct alleged," PLAC casts a wide net over all cases arising in areas of domestic or

international conflict, PLAC Br. 12–13, and their factual assertions about the conduct and motives of the corporate defendants are largely unrelated to the allegations of the complaints and findings of any court.

PLAC cites to *In re Chiquita* as an example of "litigation over...civil conflict in Colombia," PLAC Br. 16 n.11, and "arising from efforts by local security forces to protect the company's personnel from violence committed by local populations." PLAC Br. 17–18. As noted above, PLAC ignores the origin of the ATS claims in Chiquita's payments to a terrorist organization, which were also the subject of criminal charges by the U.S. government.

In March 2007, Chiquita Brands International pled guilty to the felony of knowingly providing material support to the *Autodefensas Unidas de Colombia* (AUC), a paramilitary organization that it knew to be responsible for killings and other crimes against Colombian civilians and designated a "Foreign Terrorist Organization" and a "Specially Designated Global Terrorist" by the U.S. Government. The U.S. described Chiquita's support for seven years of over 100 payments to the AUC as "prolonged, steady, and substantial" in the Sentencing Memorandum submitted to the District Court and found, after a full investigation, that "Chiquita's money helped buy weapons and ammunition used to kill innocent victims." Sentencing Memorandum By The United States, *United States v. Chiquita Brands Int'l, Inc.*, No. 07-055 (D.D.C. 2007) (filed Sept. 17, 2007)

[hereinafter Sentencing Memorandum]. After pleading guilty, Chiquita was fined $25 million for violating U.S. antiterrorism laws. *See Colombians Sue Chiquita Over Paramilitary Payments,* CNN, June 1, 2011.

In the civil ATS case, each of the several thousand plaintiffs in *In re Chiquita Brands* alleges that the Chiquita-supported AUC terrorist organization attacked his or her relative in Colombia. *In re Chiquita Brands Int'l, Inc. Alien Tort Statute and S'holder Derivative Litig.*, 792 F.Supp.2d 1301, 1307–8 (S.D. Fla. 2011). One decedent was reported to have been kidnapped when he was asleep at home, and then beaten, shot twice, and left for dead. *Id.* at 1308. The Court found that the facts alleged by plaintiffs in this case were sufficient to make plausible ATS claims for torture, extrajudicial killing, war crimes, and crimes against humanity. *Id.* at 1359.

In another case that PLAC argues was merely "litigation over... civil conflict in Colombia," PLAC Br. 16 n.11, *Baloco ex rel. Tapia v. Drummond Co., Inc.*, 640 F.3d 1338 (11th Cir. 2011), the plaintiffs alleged that the Drummond Corporation hired AUC terrorists to kill Colombian union leaders. PLAC's contention that this was related to "civil conflict" rather than the corporation's attempt to repress labor organizing is simply baseless. The suit was brought by the children of the murdered union leaders. Reversing a dismissal by the district court, the Eleventh Circuit held, "the complaint alleges an intricate

and vindictive plot, orchestrated by the defendants, that ultimately led to the assassinations of the children's fathers. If true, such conduct establishes a violation of international law sufficient for purposes of triggering ATS liability." *Id.* at 1345.

PLAC barely mentions other pending cases in which the courts have found credible allegations of corporate complicity in terrorism, describing *Linde,* 269 F.R.D. 186, as "litigation over the...Arab-Israeli conflict." PLAC Br. 15 n.11. In fact, in this case, among a series of cases,[18] citizens of countries including the United States, Afghanistan, Argentina, France, Israel, Poland, Romania, Russia, Ukraine, and Uzbekistan brought claims against Arab Bank for aiding and abetting genocide and crimes against humanity committed together with Hamas, the Palestinian Islamic Jihad, the Al-Aqsa Martyrs' Brigade and the Popular Front for the Liberation of Palestine. The plaintiffs alleged that the international bank channeled more than $100 million to terrorist groups and the families of suicide bombers. The District Court found, "the inference is unmistakable that Arab Bank knew it was administering a financial benefit to designated families of Palestinian 'martyrs' and those wounded or imprisoned in perpetrating terrorist attacks, *i.e.*, those who perpetrated the primary violations of the law of nations." *Almog v. Arab Bank, PLC,* 471

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[18] For the purposes of pre-trial discovery and proceedings, this case was consolidated with a series of similar cases. *Linde v. Arab Bank, PLC,* 269 F.R.D. 186, n.1 (E.D.N.Y. 2010).

F.Supp.2d 257, 291 (E.D.N.Y. 2007). In a later opinion, the court wrote that Arab Bank "admits that it maintained accounts for eleven people or organizations that had already been designated as Terrorists." *Linde,* 269 F.R.D. at 201 (citing plaintiffs' brief and exhibits).

Scrutiny of the cases refutes PLAC's contention that cases are brought against corporations as a "surrogate" for governments which are immune. PLAC Br. 13 n.10. For example, in *Doe v. Exxon Mobil Corp.*, the District Court and the Court of Appeals for the District of Columbia rejected defendants' motion to dismiss; the case was brought by Indonesian villagers who alleged that security forces directed by defendants committed murder, torture, battery, and false imprisonment in violation of the ATS. *Exxon*, 654 F.3d at 15. The Circuit found sufficient allegations charging that Exxon paid, supported, equipped, trained and provided the soldiers with intelligence. *Id.* at 16. When examining the factual allegations, the District Court accepted the allegations of the parent company's involvement: that Exxon Mobil Indonesia (EMOI) "alone was not 'equipped to handle all the issues that were cropping up' with security and therefore 'went up the chain and request[ed] additional corporate kinds of support' from Exxon Mobil Corporation–which enforced 'uncompromising controls' over EMOI's security." *Doe v. Exxon Mobil Corp.*, 573 F. Supp. 2d 16, 19–20 (D.D.C. 2008).

The decisions in two cases against Unocal also challenge PLAC's characterization of the corporation as a mere "surrogate" for government actors. In numerous rulings, the District Court for the Central District of California and the Ninth Circuit found sufficient allegations of Unocal's complicity in human rights abuses, including forced labor and rape, to reject motions to dismiss, *Doe v. Unocal*, 963 F. Supp. 880, 892 (C.D. Cal. 1997); *Nat'l Coal. Gov't of Union of Burma v. Unocal, Inc.*, 176 F.R.D. 329, 334 (C.D. Cal. 1997); and allow the case to proceed to trial. *Doe I v. Unocal*, 395 F.3d 932, 953–54 (9th Cir. 2002). In 2004, the 2002 decisions were vacated because the cases settled. *See Doe v. Unocal Case History*, EARTHRIGHTS INT'L, http://www.earthrights.org/legal/doe-v-unocalcase-history (last visited June 8, 2012). The settlement both compensated the plaintiffs and provided funds to enable "plaintiffs and their representatives to develop programs to improve living conditions, health care and education and protect the rights of people from the pipeline region." *Final Settlement Reached in Doe v. Unocal*, EARTHRIGHTS INT'L (Mar. 21, 2005), http://www.earthrights.org/legal/final-settlement-reached-doe-v-unocal.[19]

Another sweeping mischaracterization by PLAC is that ATS cases challenged corporate actions to defend themselves. According to PLAC,

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[19] PLAC ignores these rulings and the settlement, citing only an early opinion in the *Roe* case which dismissed claims against a soldier for forced labor. PLAC Br. n.10 (citing *Roe v. Unocal*, 70 F.Supp.2d 1073 (C.D. Cal. 1999)).

in *Wiwa v. Royal Dutch Petroleum Co.*, "Shell sought assistance from Nigerian military after [the] local population protested and disrupted its oil exploration and development operations." PLAC Br. 18 (citing *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 92 (2d Cir. 2000)). But the citation provides no support for PLAC's claim that the violence supported by Shell was necessary to protect Shell's operation. In fact, the court discusses allegations to the contrary, including that plaintiffs were "repeatedly arrested, detained and tortured," were executed after "fabricated evidence" and that, "[a]ccording to the complaint, while these abuses were carried out by the Nigerian government and military, they were instigated, orchestrated, planned, and facilitated by Shell Nigeria under the direction of the defendants." 226 F.3d at 92.

In this same category, PLAC asserts that other cases "target corporations for liability arising from efforts by local security forces to protect the company's personnel and operations from violence and sabotage committed by local populations during an internal conflict." PLAC Br. 17. However, the cases they describe involve very different sets of facts from PLAC's description. In *Sarei v. Rio Tinto, PLC*, it was the corporation that was accused of directing a pattern of human rights abuses: the government of Papua New Guinea "allegedly committed atrocious human rights abuses and war crimes at *the behest of Rio Tinto*, including a blockade, aerial bombardment of civilian targets, burning of villages, rape and

pillage," 487 F.3d at 1198 (emphasis added), and the corporation acted "with the assistance of the PNG Government...," *id.* at 1197–98, rather than being merely a bystander to the violations or a "surrogate" for an immune foreign government.

Another instance where there is a significant difference between PLAC's description and the facts alleged and analyzed by the court is *Mujica v. Occidental Petroleum Corp.*, in which the plaintiff alleges that a bomb dropped by the military of Colombia killed his mother, sister, and cousin; he also alleges that the Colombian armed forces in question were funded by Occidental Petroleum Corporation, that the intelligence for the bombing was provided by Occidental, and that the bombing was planned in Occidental's complex. *Mujica v. Occidental Petroleum Corp.*, 381 F.Supp.2d 1164, 1168 (C.D. Cal. 2005). Although PLAC argued that the corporation merely "sought assistance from Colombian security forces after left-wing insurgents engaged in violence and sabotage," PLAC Br. 18 (citing *Mujica*, 381 F.Supp.2d at 1168–69), any such actions were completely unrelated to plaintiffs' complaint, as the bombing and ransacking of the town occurred where there were no insurgents. *Mujica*, 381 F.Supp.2d at 1168.

Another case involving Occidental follows a similar pattern. In *Shiguango v. Occidental Petroleum Corp.*, Occidental contracted with Ecuadorian Special Forces to provide security during protests at its mining interests in Ecuador.

The military promptly attacked, tortured, and illegally detained the protesters. *Shiguango v. Occidental Petroleum Corp.*, No. 06-4982 (C.D. Cal. filed Aug. 25, 2009). Ultimately, the company and plaintiffs settled this case.

PLAC similarly characterizes *Giraldo v. Drummond Co.* as a case where a corporation "sought assistance" from a foreign military after attacks against its coal mining operations, PLAC Br. 18; *Giraldo v. Drummond Co.*, No. 09-1041 (N.D. Ala. filed Sept. 29, 2011). However, in *Giraldo,* the court refused to dismiss the case against the corporate defendant and two individual defendants and found credible allegations that Drummond made payments to known terrorists and directed the operations. The court held that plaintiffs had adequately alleged that Drummond "urged that such attacks be made," *Giraldo v. Drummond Co.*, No. 09-1041, at 23, 32 (N.D. Ala. April 30, 2010) (unpublished memorandum opinion).

PLAC offers only a cursory mention of cases brought against corporations for complicity in the Holocaust, describing them as "litigation over the Second World War." PLAC Br. 15 n.11. However, the actual allegations show PLAC's description fails to note the corporate misconduct on which the ATS claims were based. In *Holocaust Victims of Bank Theft v. Magyar Nemzeti Bank*, plaintiffs brought the action against a group of international banking institutions that allegedly participated in a wealth appropriation scheme based upon theft

and withholding assets from Hungarian Jews and their next of kin; the court denied defendants' motion to dismiss the case. *Holocaust Victims of Bank Theft v. Magyar Nemzeti Bank*, 807 F.Supp.2d 689 (N.D. Ill. 2011). A series of cases was brought under the ATS for atrocities committed during the Holocaust by corporations which resulted in settlement. Notably, the plaintiffs in cases cited by PLAC alleged specific corporate complicity in violations such as slave labor. *See, e.g., Iwanowa v. Ford Motor Co.*, 67 F.Supp.2d 424 (D.N.J. 1999); *Deutsch v. Turner Corp.*, 317 F.3d 1005 (9th Cir. 2003).

PLAC attempts to dismiss a series of cases charging corporations with aiding and abetting the universally recognized violation of apartheid and other related human rights abuses in South Africa, as "litigation over...South Africa's Apartheid regime." PLAC Br. 15 n.11. But in *In re South African Apartheid Litig.*, the Court ruled that the complaint did not challenge the apartheid "regime," but that plaintiffs had made sufficient allegations that particular corporate defendants were involved in direct violations and had aided and abetted specific acts of apartheid, torture, and extrajudicial killing. *See In re S. African Apartheid Litig.*, 617 F. Supp. 2d 228, 264-65 (S.D.N.Y. 2009).[20]

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[20] This past March, the claims against General Motors settled. *See* Shabtai Gold, *US Carmaker GM to Compensate Apartheid Victims*, BUS. RECORDER, Mar. 3, 2012.

Another unsubstantiated claim by PLAC is that ATS litigation against corporations operating where governments have poor human rights records could result in multinationals withdrawing from such countries and depriving them of desperately needed investment and jobs. PLAC Br. 18. Not only has PLAC provided no information to demonstrate the accuracy of a 2003 "conservative" prediction that litigation will deter $55 billion of investments, PLAC Br. 19, but factual evidence indicates that ATS suits do not deter investment. Nobel prize-winning economist Joseph Stiglitz has noted an increase in investments in South Africa during the litigation of the Apartheid case. Brief For Joseph F. Stiglitz As *Amicus Curiae* in Support of Plaintiffs-Appellees, *Balintulo v. Daimler* (*In re South African Apartheid Litigation*), No. 09-2778 (2d Cir. Nov. 30, 2009), 2009 WL 5177981. In fact, one of the defendants, Barclays National Bank Ltd., was responsible for making the single largest direct foreign investment in in South Africa in that country's history during the pendency of the litigation. *Id.* at 9 (citing *Business This Week*, THE ECONOMIST, May 14, 2005, at 88). During the pendency of *Wiwa v. Royal Dutch* and *Bowoto v. Chevron*, those companies continued to make multi-year multi-billion investments in Nigeria. Richard L. Herz, *The Liberalizing Effects of Tort: How Corporate Complicity Liability Under the Alien Tort Statute Advances Constructive Engagement*, 21 HARV. HUM. RTS. J. 207, 236 nn.108–109 (2008).

The small number of ATS cases to date have focused on the actions of corporations themselves in

the commission of human rights violations, through either direct participation or secondary liability. These cases have not sought to address larger issues such as the armed conflicts in countries where the companies operate nor is there any factual evidence that they interfered with economic investment.

III. ATS LAWSUITS DO NOT UNFAIRLY CAUSE REPUTATIONAL DAMAGE TO CORPORATIONS

PLAC argues that"[c]ompanies named as defendants in ATS suits are routinely accused of the vilest categories of misconduct[.]" and therefore unfairly suffer reputational damage. PLAC Br. 20. However, as one prominent law firm has noted, "*Separate and apart from potential legal liabilities* and concerns, the vast majority of companies in the U.S. business community has already reached the consensus that publicity surrounding human rights abuses can harm their reputations, brand images and in turn their bottom lines." Weil, Gotshal & Manges LLP, *Memorandum: Corporation Social Responsibility for Human Rights: Comments on the UN Special Representative's Report Entitled, "Protect, Respect and Remedy: a Framework for Business and Human Rights,"* May 22, 2008. (emphasis added.) In other words, it is the underlying conduct that causes the reputational harm, not the lawsuit.

PLAC also condemns the press and blog coverage of certain ATS cases as "sensational."

PLAC Br. 23. PLAC cites as an example the press coverage of the ATS claims against Chiquita, which PLAC erroneously describes as one involving "efforts by local security forces to protect the company's personnel and operations." PLAC Br. 17. Remarkably, PLAC makes no reference to the facts, referenced above, that Chiquita was criminally prosecuted for funding death squads, pled guilty, and paid a $25 million fine. Sentencing Memorandum at 13. There is nothing "sensational" about press coverage of Chiquita's admitted abuses and the plaintiffs' efforts to seek compensation.

ATS suits often allege egregious human rights violations, but that does not mean that corporations' business activities are above the scrutiny of the media, the judiciary, and the public. The scrutiny of a free press can help ensure that corporations uphold their stated commitments to human rights and social responsibility. PLAC's description of the "prejudicial impact of [ATS] suits," PLAC Br. 23, is not born out by the sources it cites.

The articles from the news media and the blogosphere cited by PLAC discuss serious allegations of international law violations against corporations.[21] Some say little or even nothing

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[21] PLAC Br. 23; *See, e.g.*, Jonathan Stempel, REUTERS, July 8, 2011, http://www.reuters.com/article/2011/07/08/us-exxonmobil-indonesia-idUSTRE76744G20110708 (explaining that D.C. Circuit's ruling that "companies are not immune from liability under a 1789 U.S. law known as the Alien Tort Statute for 'heinous conduct' allegedly committed by its

about ATS litigation.[22] Others include perspectives of both plaintiffs and corporations.[23] While blogs tend to be more partisan in language and tone, PLAC exaggerates the "far-reaching prejudicial impact" that blog posts add to ATS suits. For example, one blog to which PLAC cites has only 617

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agents in violation of human rights norms"); Karen Gullo, BLOOMBERG, Oct. 25, 2011, http://mobile.bloomberg.com/news/2011-10-25/rio-tinto-genocide-claims-reinstated-by-u-s-appeals-court-1-?category= (explaining the Ninth Circuit's ruling that "claims of genocide and war crimes fall within the limited category of issues that can be considered under the [ATS]").

[22] Michael Blanding, NATION, Apr. 19, 2006, http://alternet.org/story/34976/coke_is_death/?page=2 (discussing shareholder resolutions only); Maureen Chigbo, NEWSWATCH (Oct. 27, 2011, http://www.newswatchngr.com/index.php?option+com_content&task=view&id=3628&Itemid=1 (ATS and litigation in Europe mentioned in passing; focus of article is controversy over Shell's role in Niger Delta).

[23] PLAC Br. 22–23; Mike Pflanz, TELEGRAPH, May 25, 2009, http://www.telegraph.co.uk/finance/newsbysector/energy/5383923/Shell-played-role-in-activist-executions.html (quoting a Shell spokesperson); Erik Larson & Joshua Goodman, BLOOMBERG, Apr. 2, 2008, http://www.bloomberg.com/apps/news?pid=20601109&sid=aqsoW_J3nbOU&refer=home (quoting a Chiquita spokesperson FACT OVER FICTION (July 9, 2011), http://www.factoverfiction.com/article/1109 (quoting an Exxon spokesman); Gabriel Katsh, MULTINATIONAL MONITOR (Oct. 2000), http://www.multinationalmonitor.org/mm2000/102000/katsh.html (discussing Talisman's position); Neela Banerjee, N.Y. TIMES, June 21, 2001, at C1 (noting Exxon's position); Kyle Whitmire, WALL ST. J., Oct. 6, 2003, at A1 (describing the position of Drummond's lead counsel).

views and has been commented on once—since January 30, 2007.[24] Another post is written by a student for an online campus publication that has received one comment—since November 9, 2010.[25] And yet another has received zero comments—since November 22, 2009.[26] PLAC's assertion that such commentary will add to the "far-reaching prejudicial impact of [ATS] suits," PLAC Br. 23, is clearly an overstatement.

In their assertions about "reputational harm," PLAC offers the misleading suggestion that Petitioners compared corporate ATS defendants to Hitler and Eichmann. PLAC Br. 25. In fact, Petitioners made absolutely no mention of Hitler and Eichmann. Petitioners' brief invoked I.G. Farben and its legal responsibility after World War II to address defendants' argument that corporations had no obligations under international law. *See* Pet'rs Br. 50–51 (noting that the Control Council took action under international law to dismantle I.G. Farben and seize its assets due to Farben's violations of international law).

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[24] PLAC Br. 23; Soaraway, BUZZNET (Jan. 30, 2007), http://soaraway.buzz net.com/user/journal/108568/cocacolas-use-paramilitary-death/.

[25] PLAC Br. 24; Natalie Fine, THE WESLEYAN ARGUS (Nov. 9, 2010), http://wesleyanargus.com/2010/11/09/the-evil-behind-cocacola/.

[26] Bataween, POINT OF NO RETURN, (Nov. 22, 2009), http://jewishrefugees.blogspot.com/search?updated-min=2008-12-31T16:00:00-08:00&updated-max=2009-11-26T10:56:00Z&max-results=50&start=37&by-date=false.

Amici do not dispute PLAC's statement, PLAC Br. 24, that companies have recently made commitments to socially responsible business practices. ATS suits have reinforced the importance of such practices. United Nations Special Representative John Ruggie has commented that "the mere fact of providing the possibility of a remedy has made a difference." Special Representative of the Secretary-General, *Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, ¶62, U.N. Doc. E/CN.4/2006/97 (Feb. 22, 2006).

In assessing the impact of the 2004 settlement between the Unocal corporation and two groups of plaintiffs, Carole Basri, director of the New York chapter of the American Corporate Counsel Association, author of INTERNATIONAL CORPORATE PRACTICE: A PRACTITIONER'S GUIDE TO GLOBAL SUCCESS and a University of Pennsylvania corporate law instructor, commented, "This is going to open up a whole new way of looking at what the responsibility of U.S. corporations is when they are dealing abroad.... It's going to have a tremendous impact." Quoted by Lisa Girion, *Judge Oks Unocal Abuse Lawsuit*, L. A. TIMES (June 12, 2002). A year later, Elliot Schrage, former senior vice president for global affairs at the Gap, wrote in the Harvard Business Review, "Any meaningful defense of ATS claims will require a company to show that it has made a good faith effort to closely examine local

practices and ensure that they meet international human rights standards." Elliott Schrage, *Memorandum: Emerging Threat: Human Rights Claims*, HARV. BUS. REV. 16, 17 (2003).

Businesses that take proactive steps to identify and avoid involvement in gross human rights abuses have the least to fear from the ATS. In his 2010 report to the UN Human Rights Council, Mr. Ruggie noted:

> Conducting due diligence enables companies to identify and prevent adverse human rights impacts. Doing so also should provide corporate boards with strong protection against mismanagement claims by shareholders. In Alien Tort Statute and similar suits, proof that the company took every reasonable step to avoid involvement in the alleged violation can only count in its favour.

Special Representative of the Secretary-General, *Business and Human Rights: Further Steps toward the Operationalization of the "Protect, Respect and Remedy" Framework*, ¶86, U.N. Doc. A/HRC/14/27 (Apr. 9, 2010).

The burden on good businesses to avoid involvement in gross human rights abuses is not unreasonable, just as the burden of avoiding criminal or fraudulent conduct is not unreasonable. For example, the US Sentencing

Guidelines for Organizational Defendants requires companies to have rigorous due diligence programs to avoid involvement in criminal misconduct if they want to avoid harsh sentences. U.S. Sentencing Guidelines Manual §82B.1. Few have argued that this is an unreasonable burden. Similarly, UN Guiding Principle 23(c) provides that in all cases, companies should "treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate." Special Representative of the Secretary-General, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework,* U.N. Doc. A/HRC/17/31 (Mar. 21, 2011).

ATS suits seek to promote "corporate social responsibility based on international human rights and labor rights norms[,]" PLAC Br. 24, and reaffirm universal prohibitions against "genocide, war crimes, torture, extrajudicial killing, [and] crimes against humanity," which PLAC agrees are "well-established violation[s] of international law." PLAC App. 5. Corporate commitment to socially responsible conduct enhances reputation. It is the conduct, rather than litigation, that is harmful to corporate reputation.

CONCLUSION

PLAC's analysis of corporate ATS cases is unfortunately inaccurate and exaggerated. The cases do not place an unreasonable burden on U.S. courts. They proceed against U.S. corporations or corporations with sufficient ties to the U.S. to support personal jurisdiction and where there are sufficient allegations of direct or secondary liability for human rights violations. Cases that do not meet these criteria are efficiently dismissed by the courts. ATS cases have contributed to an international system of greater self-regulation for multinational corporations and are an important means to level the playing field for businesses which are not complicit in human rights abuses.

Respectfully submitted,

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APPENDIX A: Amici Curiae

The Institute for Human Rights and Business (IHRB) is a global center of expertise on the relationship between business and internationally proclaimed human rights standards. IHRB provides a trusted, impartial space for dialogue and independent analysis to deepen understanding of human rights challenges and the appropriate roles of business.

Errol P. Mendes is a lawyer, author and law professor at the University of Ottawa and has been an advisor to corporations, governments, civil society groups and the United Nations in the areas of human rights, corporate law, public and private sector governance and corporate social responsibility. Professor Mendes has been a senior advisor in the Privy Council Office of the Canadian Government, and has worked with leading private sector companies and associations to establish an International Code of Ethics for Canadian Businesses. In 1999, the Office of the Secretary General of the United Nations invited him to be an advisor on the Global Compact initiative, where Professor Mendes assisted with the drafting of the UN Global Compact.

David Petrasek is an associate professor at the Graduate School of Public and International

Affairs, University of Ottawa. Professor Petrasek has worked in the human rights field for over 20 years with NGOs, the United Nations, and research centers, and has taught international human rights and humanitarian law courses at universities in Canada, Sweden and the United Kingdom. He has served as a Human Rights Officer and Senior Adviser to the Office of the UN High Commissioner for Human Rights (OHCHR), Research Director at the International Council for Human Rights Policy (ICHRP), Senior Director for Policy at Amnesty International, and Policy Director at the Centre for Humanitarian Dialogue. He is a member of the International Advisory Network for the Business and Human Rights Resource Centre. Professor Petrasek is a graduate of the University of Waterloo, York University, and the London School of Economics.

John F. Sherman, III is an attorney and Senior Program Fellow in the Corporate Social Responsibility Initiative of the Mossavar-Rahmani Center for Business and Government at the Harvard Kennedy School, where he focuses on business and human rights. From 2008 through 2011, Mr. Sherman served as senior legal advisor to Professor John Ruggie, the UN Special Representative of the Secretary General on Business and Human Rights, whose Guiding

Principles on Business and Human Rights were unanimously endorsed by the UN Human Rights Council in June 2011, and have become the authoritative normative standard for business and human rights worldwide. Until his retirement in 2008, Mr. Sherman served as deputy general counsel of National Grid, where he held senior legal positions with that company and its predecessors in the areas of litigation, corporate social responsibility, business ethics, environmental and safety law, and corporate governance. Mr. Sherman is a graduate of Harvard Law School and Dartmouth College.

The University of Minnesota Human Rights Litigation and International Advocacy Clinic instructs students in human rights litigation and international human rights advocacy, particularly in United States courts. The Human Rights Clinic works closely with the other human rights institutions at the University of Minnesota, including the University of Minnesota Human Rights Center, which was inaugurated in December 1988 to help train effective human rights professionals and volunteers, and provide assistance to human rights advocates, monitors, students, and educators.

APPENDIX B:

Table of ATS Cases Brought Against U.S. and Foreign Corporate Defendants

	Case	U.S. Defendant Headquarters
I.	***Cases Involving U.S. Citizen Defendants***[1]	
1	*Abagninin v. AMVAC Chemical Corp.*, 545 F. 3d 733 (9th Cir. 2008)	Los Angeles, California
2	*Abdullahi v. Pfizer, Inc.*, 562 F.3d 163 (2d Cir. 2009)	New York, New York
3	*Abecassis v. Wyatt*, 785 F. Supp. 2d 614 (S.D. Tex. 2011)	NuCoastal Corporation - Houston, Texas
4	*Adhikari v. Daoud & Partners*, No. 09-1237, 2010 WL 744237 (S.D. Tex. Mar. 1, 2010)	Kellogg Brown & Root - Houston, Texas

[1] Many of these cases contain multiple defendants; cases are included in this category if one or more of the defendants is headquartered in the United States or is a U.S. subsidiary.

5	*Aguilar v. Imperial Nurseries*, 2007 WL 1183549 (D. Conn. filed Feb. 8, 2007)	Granby, Connecticut
6	*Aguinda v. Texaco, Inc.*, 303 F. 3d 470 (2d Cir. 2002)	White Plains, New York
7	*Al Shimari v. CACI Intern., Inc.*, --- F.3d ----, 2012 WL 1656773 (4th Cir.(Md.) May 11, 2012) (NO. 09-1335, 10-1891, 10-1921)	Arlington, Virginia
8	*Aldana v. Del Monte Fresh Produce N.A., Inc.*, 578 F.3d 1283 (11th Cir. 2009)	Coral Gables, Florida
9	*Al-Quraishi v. Nakhla*, 728 F. Supp. 2d 702 (D. Md. 2010)	Arlington, Virginia
10	*Al-Razzaq v. Xe*, 2009 WL 1350956 (S.D. Cal. filed Mar. 26, 2009)	Arlington, Virginia

11	*Al-Taee v. L-3 Services*, 2008 WL 2598173 (E.D. Mich. filed June 30, 2008)	New York, New York
12	*Arias v. Dyncorp*, 738 F. Supp. 2d 46 (D.D.C. 2010)	Falls Church, Virginia
13	*Aziz v. Alcolac, Inc.*, 658 F. 3d 388 (4th Cir. 2011)	Baltimore, Maryland
14	*Baloco ex rel. Tapia v. Drummond Co., Inc.*, 640 F. 3d 1338 (11th Cir. 2011)	Vestavia, Alabama
15	*Bano v. Union Carbide Corp.*, 198 F. Appx. 32 (2d Cir. 2006)	Houston, Texas
16	*Bao Ge v. Li Peng*, 201 F. Supp. 2d 14 (D.D.C. 2000)	Bank of China (New York, New York)
17	*Bauman v. DaimlerChrysler Corp.*, 644 F. 3d 909 (9th Cir. 2011)	Auburn Hills, Michigan

18	*Beanal v. Freeport-McMoran, Inc.*, 197 F. 3d 161 (5th Cir. 1999)	Phoenix, Arizona
19	*Bigio v. Coca-Cola Co.*, 239 F. 3d 440 (2d Cir. 2000)	Atlanta, Georgia
20	*Bleier v. Deutschland*, 2009 WL 4679371 (N.D. Ill. filed Sept. 17, 2009)	Citibank - New York, New York; JP Morgan Chase - Chicago, Illinois; Bank of New York Mellon - New York, New York
21	*Bodner v. Banque Paribas*, 114 F. Supp. 2d 117 (E.D.N.Y 2000)	Chase Manhattan - Chicago, Illinois
22	*Bowoto v. Chevron Corp.*, 621 F. 3d 1116 (9th Cir. 2010)	San Ramon, California
23	*Corrie v. Caterpillar, Inc.*, 403 F. Supp. 2d 1019 (W.D. Wash. 2005)	Peoria, Illinois

24	*Cunzhu v. Yahoo!, Inc.*, 2008 WL 1894039 (N.D. Cal. filed Feb. 22, 2008)	Sunnyvale, California
25	*Daobin v. Cisco Systems*, Inc., 2011 WL 3962879 (D. Md. filed June 6, 2011)	San Jose, California
26	*Deutsch v. Turner Corp.*, 317 F. 3d 1005 (9th Cir. 2003)	California
27	*Diaz v. Grupo Mexico, Inc.*, 2010 WL 1944094 (D.Ariz. filed April 22, 2010)	Americas Mining Corp. - Arizona; Southern Copper Corp. – Arizona
28	*Doe I v. Cisco Systems, Inc.*, 2011 WL 1338057 (E.D. Tex. filed May 19, 2011)	San Jose, California
29	*Doe I. v. Wal-Mart Stores, Inc.*, 2005 WL 4049637 (C.D. Cal. filed Dec. 23, 2005)	Bentonville, Arkansas

30	*Doe v. Drummond Co., Inc.*, 2010 WL 2572422 (N.D. Ala. filed June 14, 2010)	Birmingham, Alabama
31	*Doe v. Exxon Mobil Corp.*, 654 F. 3d 11 (D.C. Cir. 2011)	Irving, Texas
32	*Doe v. Nestle, S.A.*, 748 F. Supp. 2d 1057 (C.D. Cal. 2010)	ADM - Decatur, Illinois; Cargill, Inc - Minnetonka, Minnesota
33	*Doe v. Neveleff*, 2011 WL 5027754 (W.D. Tex. filed Oct. 19, 2011)	Nashville, Tennessee
34	*Estate of Manook v. Research Triangle Institute, Intern.*, 759 F. Supp. 2d 674 (E.D.N.C. 2010)	Research Triangle Park, North Carolina
35	*Estate of Rodriguez v. Drummond Co. Inc.*, 256 F. Supp. 2d 1250 (N.D. Ala. 2003)	Birmingham, Alabama

36	*Fiouris v. Turkish Cypriot Community*, 2010 WL 7378418 (D.D.C. filed July 20, 2010)	HSBC USA, N.A. - Buffalo, New York
37	*Flomo v. Firestone Natural Rubber*, 744 F. Supp. 2d 810 (S.D. Ind. 2010)	Nashville, Tennessee
38	*Flores v. Southern Peru Copper Corp.*, 343 F. 3d 140 (2d Cir. 2003)	Arizona
39	*Ge v. Shanghai Municipal Branch Committee of Chinese Communist Party*, 2010 WL 4235973 (S.D.N.Y. filed Oct. 10, 2010)	ThyssenKrupp USA - Washington, D.C.
40	*Genocide Victims of Krajina v. L-3 Services, Inc.*, No. 10-5197, 2011 WL 3625055 (N.D. Ill. Aug. 17, 2011)	New York City, New York

41	*Giraldo v. Drummond Co.*, Inc., 2011 WL 4863942 (N.D. Ala. filed Sept. 29, 2011)	Birmingham, Alabama
42	*Guanipa v. Chavez*, 2009 WL 1392253 (S.D. Fla. filed May 12, 2009)	Citgo Petroleum - Houston, Texas
43	*Guzman-Martinez v. Corrections Corp. of America*, 2011 WL 6062622 (D. Ariz. Filed Dec. 5, 2011)	Nashville, Tennessee
44	*Hamid v. Price Waterhouse*, 51 F. 3d 1411 (9th Cir. 1995)	London, United Kingdom
45	*Hassoon v. Xe*, 2009 WL 1953283 (S.D. Cal. filed Apr. 1, 2009)	Arlington, Virginia
46	*Ibrahim v. Titan Corp.*, 391 F. Supp. 2d 10 (D.D.C. 2005)	San Diego, California

47	*In re African-American Slave Descendants Litig.*, 304 F.Supp.2d 1027 (N.D. Ill. 2004)	FleetBoston Financial - Boston, Massachusetts.; CSX - Jacksonville, Florida
48	*In re Chiquita Brands Intern. Inc. Alien Tort Statute Shareholder Derivative Litigation*, 792 F. Supp. 2d 1301 (S.D. Fla. 2011)	Cincinnati, Ohio
49	*In re Terrorist Attacks on September 11*, 740 F. Supp. 2d 494 (S.D.N.Y. 2010)	Al Haramain Islamic Foundation, Inc. - Ashland, Oregon
50	*In re South African Apartheid Litig.*, 633 F. Supp. 2d 117 (S.D.N.Y. 2009)	Ford - Dearborn, Michigan; GM - Detroit, Michigan; IBM - Armonk, New York
51	*In re XE Services Alien Tort Litig.*, 665 F. Supp. 2d 569 (E.D. Va. 2009)	Virgina

52	*Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424 (D.N.J. 1999)	Dearborn, Michigan
53	*Jama v. Esmor Correctional Services, Inc.*, 577 F. 3d 169 (3d Cir. 2009)	Melville, New York (Originally), Relocated to Sarasota, Florida
54	*Jarallah v. Xe*, 2009 WL 1350958 (S.D. Cal. filed Mar. 27, 2009)	Arlington, Virginia
55	*Khulumani v. Barclay Nat. Bank Ltd.*, 509 F. 3d 148 (2d Cir. 2007)	Ford - Dearborn, Michigan; GM - Detroit, Michigan; IBM - Armonk, New York
56	*Kruman v. Christie's Int'l PLC*, 129 F. Supp. 2d 620 (S.D.N.Y. 2001)	Sotheby's Inc – New York, New York
57	*Licci v. American Exp. Bank Ltd.*, 704 F. Supp. 2d 403 (S.D.N.Y. 2010)	New York City, New York

58	*Lim v. Government of Singapore*, 2011 WL 2428948 (N.D. Ill. filed June 14, 2011)	Hayward, California
59	*Magnifico v. Villanueva*, 783 F. Supp. 2d 1217 (S.D. Fla. 2011)	Miami, Florida and Madison, Wisconsin
60	*Manook v. Unity Resources Group*, 2008 WL 310879 (D.D.C. filed Jan. 17, 2008)	Triangle Park, North Carolina
61	*Margallo-Gans v. Farrell*, 2009 WL 5120729 (D.S.D. filed Oct. 16, 2009)	Phoenix, Arizona
62	*Mastafa v. Chevron* Corp., 759 F. Supp. 2d 297 (S.D.N.Y. 2010)	San Ramon, California
63	*Maugein v. Newmont Mining Corp.*, 298 F. Supp. 2d 1124 (D.Colo. 2004)	Greenwood Village, Colorado

64	*Mendonca v. Tidewater*, Inc., 159 F. Supp. 2d 299 (E.D. La. 2001)	New Orleans, Louisiana/ Houston, Texas
65	*Mohamed v. Erinys International Ltd.*, 2010 WL 2679426 (S.D. Tex. filed Apr. 28, 2010)	NOUR USA, Ltd. - Vienna, Virginia
66	*Mohamed v. Jeppesen Dataplan, Inc.*, 614 F. 3d 1070 (9th Cir. 2010)	Englewood, Colorado
67	*Mujica v. Occidental Petroleum Corp.*, 381 F. Supp. 2d 1164 (C.D. Cal. 2005)	Los Angeles, California
68	*National Coalition Government of Union of Burma v. Unocal, Inc.*, 176 F.R.D. 329 (C.D. Cal. 1997)	El Segundo, California
69	*Ponce-Rubio v. North Brevard, Inc.*, 2003 WL 23772118 (M.D. Fla. filed Oct. 3, 2002)	Cocoa, Brevard County, Florida

70	*Prince Hotel, SA v. Blake Marine Grp.*, 433 F. Appx 706 (11th Cir. 2011)	Harvey, Louisiana
71	*Roe v. Bridgestone Corp.*, 257 F.R.D. 159 (S.D. Ind. 2009)	Bridgestone Americas Holding, Inc.- Nashville, Tennessee; Firestone Polymers, LLC – Ohio
72	*Roe v. Unocal Corp.*, 70 F. Supp. 2d 1073 (C.D. Cal. 1999)	El Segundo, California
73	*Sa'adoon v. Xe*, 2009 WL 761253 (S.D. Cal. filed Mar. 19, 2009)	Arlington, Virginia
74	*Saldana v. Occidental Petroleum Corp.*, 2011 WL 5142961 (C.D. Cal. filed Oct. 20, 2011)	Los Angeles, California
75	*Saleh v. Titan Corp.*, 580 F. 3d 1 (D.C. Cir. 2009)	San Diego, California

76	*Saharkhiz v. Nokia Corp.*, 2010 WL 3375217 (E.D. Va. filed Aug. 16, 2010)	Nokia Inc. – New York, New York; Siemens Corp White Plains, New York; Nokia Siemens Networks US, LLC, - Atlanta, Georgia
77	*Shiguango v. Occidental Petroleum Corp.*, 2009 WL 2921372 (C.D. Cal. filed Aug. 10, 2006)	Los Angeles, California
78	*Sinaltrainal v. Coca-Cola Co.*, 578 F. 3d 1252 (11th Cir. 2009)	Atlanta, Georgia
79	*Sinaltrainal v. Nestle USA, Inc.*, 2006 WL 3668381 (S.D. Fla. filed Oct. 31, 2006)	Nestle USA – California
80	*Siswinarti v. Jennifer Shien Ng*, 2005 WL 2511406 (D.N.J. filed Aug. 16, 2005)	Portland, Oregon

81	*Turedi v. Coca-Cola Co.*, 460 F. Supp. 2d 507 (S.D.N.Y. 2006)	Atlanta, Georgia
82	*Vieira v. Eli Lilly and Co.*, 2009 WL 3150953 (S.D. Ind. filed Sept. 25, 2009)	Indianapolis, Indiana
83	*Viet. Ass'n for Victims of Agent Orange v. Dow Chem. Co.*, 517 F. 3d 104 (2d Cir. 2008)	Dow - Midland, Michigan; Monsanto - Creve Coeur, Missouri; Hercules - Wilmington Delaware; Occidental - Dallas, Texas; Uniroyal - Middlebury, Connecticut
84	*Wang Xiaoning v. Yahoo! Inc.*, 2007 WL 1511131 (N.D. Cal. filed Apr. 18, 2007)	Sunnyvale, California
85	*Zhen v. Yahoo!, Inc.*, 2009 WL 1241004 (N.D. Cal. filed Feb. 26, 2009)	Sunnyvale, California

86	*Zheng v. Yahoo, Inc.*, 2008 WL 4056779 (N.D. Cal. filed June 16, 2008)	Sunnyvale, California
	Case	**Headquarters**
II.	***Cases with Only Foreign Companies***	
A.	***U.S. Jurisdiction Granted***	
87	*Benjamins v. British European Airways*, 572 F. 2d 913 (2d Cir. 1978)	Ruilslip, London Borough of Hillingdon, UK.
88	*Eastman Kodak Co. v. Kavlin*, 978 F. Supp. 1078 (S.D. Fla. 1997)	La Paz, Bolivia
89	*Hereros ex rel. Riruako v. Deutsche Afrika-Linien Gmblt & Co.*, 232 F. Appx. 90 (3d Cir. 2007)	Hamburg, Germany

90	*Hidalgo v. Siemens AG*, 2011 WL 74581 (S.D. Fla. filed Jan. 11, 2011)	Munich, Germany
91	*Holocaust Victims of Bank Theft v. Maygyar Nemzeti Bank*, No. 10-1884, 2011 WL 1900340 (N.D. Ill. May 18, 2011)	Budapest, Hungary
92	*Licea v. Curacao Drydock Co.*, 584 F. Supp. 2d 1355 (S.D. Fla 2008)	Curacao, Netherlands Antilles
93	*Linde v. Arab Bank, PLC*, 269 F.R.D. 186 (E.D.N.Y. 2010)	Amman, Jordan
94	*Liu Bo Shan v. China Const. Bank Corp.*, 421 Fed. Appx. 89 (2d Cir. 2011)	Beijing, People's Republic of China

95	*Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F. 3d 244 (2d Cir. 2009)	Calgary, Alberta, Canada
96	*Sarei v. Rio Tinto, PLC*, Nos. 02-56256, 02-56390, 09-56381, 2011 WL 5041927 (9th Cir. Oct. 25, 2011)	London, UK
97	*Wiwa v. Royal Dutch Petroleum Co.*, 226 F. 3d 88 (2d Cir. 2000)	Nigeria
B.	***Cases Pending***	
98	*Ahmed v. Dubai Islamic Bank*, 2008 WL 2935356 (S.D. Fla. filed June 2, 2008)	Dubai, U.A.E.
99	*Bera v. Shell Petroleum Development Company of Nigeria Ltd.*, 2011 WL 5522680 (S.D.N.Y. filed Nov. 14, 2011)	Nigeria

100	*Cooperhill Inv. Ltd. v. Rep. of Seychelles*, 2011 WL 601962 (S.D.N.Y. filed Feb. 14, 2011)	Seychelles
101	*Kaplan v. Al Jazeera*, 2011 WL 2941526 (S.D.N.Y. filed July 18, 2011)	Doha, Qatar
102	*Kiobel v. Royal Dutch Petroleum Co.*, 642 F. 3d 268 (2d Cir. 2011)	The Hague, Netherlands
103	*Luu v. Int'l Inv. Trade & Service Group*, 2011 WL 1398984 (S.D. Tex. filed Apr. 13, 2011)	Vietnam
104	*Okpabi v. Royal Dutch Shell, PLC*, 2011 WL 5027193 (E.D. Mich. Filed Oct. 18, 2011)	The Hague, Netherlands

105	*Tymoshenko v. Firtash*, 2011 WL 1560364 (S.D.N.Y. filed Apr. 26, 2011)	Zug, Switzerland
106	*Victims of the Hungarian Holocaust v. Hungarian State Railways*, 2010 WL 560777 (N.D. Ill. filed Feb. 9, 2010)	Budapest, Hungary
C.	***Jurisdiction denied***	
107	*Aikpitanhi v. Iberia Airlines of Spain*, 553 F. Supp. 2d 872 (E.D. Mich. Mar. 31, 2008)	London, United Kingdom
108	*Anderman v. Federal Rep. of Austria*, 256 F. Supp. 2d 1098 (C.D. Cal. 2003)	Austria
109	*Arndt v. UBS AG*, 342 F. Supp. 2d 132 (E.D.N.Y. 2004)	Zurich and Basel, Switzerland

110	*Chowdhury v. WorldTel Bangladesh Holding, Ltd.*, 588 F. Supp. 2d 375 (E.D.N.Y. 2008)	Bangladesh
111	*Daventree Ltd. v. Rep. of Azer.*, 349 F. Supp. 2d 736 (S.D.N.Y. 2004)	Zurich, Switzerland
112	*Tamam v. Fransabank Sal*, 677 F. Supp. 2d 720 (S.D.N.Y. 2010)	Beirut, Lebanon
113	*Whiteman v. Fed. Rep. of Austria*, 2002 WL 34593773 (S.D.N.Y. filed Nov. 12, 2002)	Austria

D.	***No Corporate Defendants***	
114	*Abrams v. Societe Nationale des Chemins de Fer Francais*, 175 F. Supp. 2d 423 (E.D.N.Y. 2001)	Montparnasse, France
115	*Orkin v. Swiss Confederation*, No. 11-1414, 2011 WL 4822343 (2d Cir. Oct. 12, 2011)	Switzerland